

**Nevco Mechanical, Inc. and United Association of  
Journeyman and Apprentices of the Plumbing  
and Pipefitting Industry, Local 741, AFL-CIO.  
Case 28-CA-12309**

September 27, 1994

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND COHEN

Upon a charge filed by United Association of Journeymen and apprentices of the Pipefitting Industry, Local 741, AFL-CIO, the Union, on November 30, 1993, the General Counsel of the National Labor Relations Board issued a complaint on January 31, 1994, against Nevco Mechanical, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. On March 1, 1994, the Respondent filed an answer to the complaint. However, on August 15, 1994, the Respondent withdrew its answer.

On August 25, 1994, the General Counsel filed a Motion to Transfer and Continue Matter Before the Board and for Summary Default Judgment with the Board. On August 29, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Default Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Default Judgment disclose that the Respondent has withdrawn its answer. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the complaint are considered to be admitted to be true.<sup>1</sup>

Accordingly, based on the withdrawal of the Respondent's answer, we grant the General Counsel's Motion for Summary Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Nevada corporation, has been engaged in business as a fire sprinkler and mechanical subcontractor on a construction contract for the Arizona Air National Guard (Arizona Guard Project) in Tucson, Arizona. During the 12-month period ending November 30, 1993, the Respondent, in the course and conduct of its business operations, purchased and received in interstate commerce at its place of business in the State of Arizona goods and materials valued in excess of \$50,000 directly from points located outside the State of Arizona. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

On about September 20, 1993, the Respondent refused to employ Gary Woo or consider him for employment, and since that date, continues to fail and refuse to employ him, because he joined, supported, or assisted the Union or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, and in order to discourage its employees from engaging in such activities or other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

On about September 20, 1993, the Respondent interrogated employees about their union membership and sympathies and told employees that the Respondent would not hire them if they were union members. On September 27, 1993, the Respondent threatened employees with unspecified discipline if they became or were union members. On about October 5, 1993, the Respondent interrogated employees about their union membership and sympathies.

**CONCLUSIONS OF LAW**

By the acts and conduct described above, the Respondent has interfered with, restrained, or coerced, and is continuing to interfere with, restrain or coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. In addition, by refusing to employ Gary Woo or consider him for employment, and continuing to fail and refuse to employ him, the Respondent has discriminated, and is continuing to discriminate, regarding hire, tenure, and terms and conditions of employment of its employees, thereby discouraging membership in

<sup>1</sup> See *Maislin Transport*, 274 NLRB 529 (1985).

a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by refusing to employ Gary Woo since September 20, 1993, we shall order the Respondent to offer him immediate employment and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Nevco Mechanical, Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to employ or consider for employment an employee because that employee joined, supported, or assisted United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 741, AFL-CIO, or any other union, or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or in order to discourage its employees from engaging in such activities or other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

(b) Interrogating employees about their union membership and sympathies.

(c) Telling employees it would not hire them if they were union members.

(d) Threatening employees with unspecified discipline if they become or were union members.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Gary Woo immediate employment in the same position in which he would have been hired in the absence of the discrimination against him or, if that position no longer exists, to a substantially equivalent position, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him retroactive to September 20, 1993, as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Chandler, Arizona, and Las Vegas, Nevada, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to employ or consider for employment an employee because that employee joined, supported, or assisted United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 741, AFL-CIO, or any other union, or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or in order to discourage our employees from engaging in such activities or other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

WE WILL NOT interrogate employees about their union membership and sympathies.

WE WILL NOT tell employees we would not hire them if they were union members.

WE WILL NOT threaten employees with unspecified discipline if they become or were union members.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL offer Gary Woo immediate employment in the same position in which he would have been hired in the absence of the discrimination against him or, if that position no longer exists, to a substantially equivalent position, and WE WILL make him whole, with in-

terest, for any loss of earnings and other benefits suffered as a result of our discrimination against him retroactive to September 20, 1993.

NEVCO MECHANICAL, INC.